



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0118]

In the Matter of

Texas Gamma Ray, LLC
Pasadena, Texas

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Docket No.: 030-37780/030-37868
License No.: 42-29303-01

EA-10-102

Confirmatory Order (Effective Immediately)

I

Texas Gamma Ray, LLC (TGR or Licensee), is the former holder of License No. 42-29303-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 34, on January 6, 2009. The license authorized industrial radiographic operations in accordance with conditions specified therein. On July 25, 2011, TGR terminated its NRC materials license. Texas Gamma Ray, LLC, holds an Agreement State license authorized by the state of Texas. Therefore, pursuant to 10 CFR 150.20(a)(1), TGR is granted a general license by the NRC to conduct the same activities authorized by its Texas license in areas where the NRC maintains regulatory jurisdiction for the use of radioactive material. Prior to obtaining its NRC materials license, TGR performed licensed activities in offshore Federal waters under its general NRC license at various times during calendar years 2007 and 2008.

This Confirmatory Order (Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on April 23, 2012, in Arlington, Texas.

II

From June 4, 2009, through November 30, 2010, the NRC conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under TGR's former NRC license. On July 20, 2009, the NRC's Office of Investigations (OI), Region IV, began an investigation (Case No. 04-2009-066) to determine if TGR willfully failed to provide complete and accurate information to the NRC by: (1) not disclosing the locations of radioactive materials stored in excess of 180 days at temporary job site, and (2) not disclosing accurate information on the location of where radiography work was dispatched to the field. Also, the investigation was initiated to determine if TGR failed to comply with NRC security requirements, in violation of its license requirements. OI concluded the investigation on May 20, 2010. The NRC did not substantiate that willfulness was associated with the apparent violations.

By letter dated December 22, 2010 (ML103560822), the NRC transmitted the results of the inspection and investigation in NRC Inspection Report 030-37780/2009-001 and Investigation Report 4-2009-066 (ML103560822) to TGR. Enclosure 2 of the letter was not made publicly available because it contained Security-Related Information. Based on the results of the NRC inspection and the evidence developed during the investigation, three apparent violations of NRC requirements were identified. The apparent violations involved the storage of licensed material at a location in Rock Springs, Wyoming, that was not authorized on

the license and failures to comply with NRC security requirements that are described in the Appendix to this Order (Appendix). The Appendix includes Security-Related Information; therefore, it is not publicly available.

On March 2, 2011, the NRC and TGR met in a predecisional enforcement conference (PEC) in Arlington, Texas. During the PEC, TGR provided supplemental information regarding two of the apparent violations. Because of the NRC's concern that willfulness may be associated with these two apparent violations, OI initiated a second investigation (Case No. 4-2011-034) on March 31, 2011. During the second investigation, concluded on November 18, 2011, OI did not identify additional apparent violations. However, based on the information developed during this second investigation, the NRC determined that a TGR radiographer deliberately failed to implement NRC security requirements and deliberately stored radioactive materials at a location not authorized by the license.

By letter dated February 23, 2012, the NRC informed TGR that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered TGR the opportunity to respond in writing, request a PEC, or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. In response, on March 5, 2012, TGR requested ADR to resolve this matter with the NRC.

On April 23, 2012, the NRC and TGR representatives met in an ADR session with a professional mediator, arranged through the Cornell University Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Texas Gamma Ray, LLC (TGR), requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of that preliminary agreement are described below, except for those portions of the agreement that include Security-Related Information and, therefore, are not publicly available. The security-related elements of the agreement, as well as those portions of this Order that address those security-related elements, are described in the Appendix to this Order. The following description of the preliminary ADR agreement, and the required actions described in Section V of this Order include references to the Appendix to allow for public release of this Order.

The NRC recognizes the corrective actions, associated with the apparent violations that TGR has already implemented, which include:

- Retrieving the licensed material from Wyoming and transferring it to a site in Texas authorized for storage by the State of Texas.
- Revising internal procedures to require:
 - A security-related provision that is described in the Appendix to this Order;
 - A security-related provision that is described in the Appendix to this Order; and
 - The radiation safety officer's (RSO) written approval prior to storing licensed material at temporary job sites and other sites not listed on a specific materials license.

- Requiring the RSO's approval for storing licensed material and documenting it on a "Storage Approval Form," which includes:
 - A security-related item that is described in the Appendix to this Order;
 - A security-related item that is described in the Appendix to this Order;
 - A security-related item that is described in the Appendix to this Order;
 - Verification that the vault is suitable for storage of licensed material;
 - Letter from property owner;
 - Approval of facility for storage by a regulatory agency;
 - Verification that a calculation of public dose has been performed; and
 - The RSO's signature.

- Training all radiographers on the new procedures.

Texas Gamma Ray, LLC, has also agreed to take the following corrective actions to address the apparent violations:

- A. Texas Gamma Ray, LLC, will establish, implement, and maintain a comprehensive training program for employees conducting licensed activities (radiographic operations or radiography). The goal of this program is to conduct licensed operations safely and deter future willful violations by ensuring that its employees understand the importance that the NRC places on violations associated with deliberate misconduct as well as violations caused by careless disregard. The training program will consist of training for all current and newly hired employees performing licensed activities and will provide for annual refresher training. Texas Gamma Ray, LLC, will complete the following activities in support of the training program:

1. Training Requirements for Current Employees

- Within 90 days of the date of the Confirmatory Order, TGR will conduct a safety stand-down (short-term training) to discuss the importance of safely conducting licensed activities, including the concept of a healthy safety culture, willfulness, security of licensed material, and ethics.
- Within 60 days of the date of the Confirmatory Order, TGR will contract with an external contractor to provide comprehensive training to all of its current employees who are engaged in licensed activities (up to and including the company president) on what is meant by willfulness (careless disregard and deliberate misconduct), the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct, and the NRC's policy statement on safety culture.
- Texas Gamma Ray, LLC, will submit for NRC review and approval, the resume of the contractor recommended to perform the training, at least 15 days prior to the time that TGR intends to execute a contract with the external training contractor.
- At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, TGR will submit for NRC review and approval an outline of the topics to be covered during this training session and a copy of a typical examination and the

correct answers. The topics in section A.2 of this order will be included in this training.

- Texas Gamma Ray, LLC, must complete the comprehensive training of TGR management within 150 days of the NRC's approval of the outline of course topics.
- Texas Gamma Ray, LLC, must complete the comprehensive training of employees within 360 days of the NRC's approval of the outline of course topics.
- Texas Gamma Ray, LLC, will assess the effectiveness of the comprehensive training through written testing. Any employee not passing the test will receive remedial training and will be re-tested.
- Within 30 days of the completion of the comprehensive training, TGR will provide to the NRC: (1) a letter stating that the training as specified above has been completed and (2) the results of the employee testing process.

2. Training Program Requirements Training for the current employees, new employees and annual refresher training will include the following elements:

- A discussion of the NRC's policy statement on safety culture (76 FR 34773) and TGR management's support of the policy. As part of this training, employees must be provided a copy of NUREG/BR-0500, "Safety Culture Policy Statement." TGR will provide a letter from the company president to

each employee regarding company expectations concerning 10 CFR 30.9 and 10 CFR 30.10, and safety and security issues; or issue a company policy statement on these topics;

- A security-related topic that is described in the Appendix;
- A security-related topic that is described in the Appendix;
- A security-related topic that is described in the Appendix;
- A discussion on the importance of understanding and following TGR's internal procedures and regulatory requirements applicable to radiographic operations;
- A discussion on when to suspend work activities and verify whether specific circumstances allow for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of workers and members of the public;
- A discussion of the elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, and examples of enforcement actions that the NRC has taken against individuals. These actions are publicly available on the NRC's Web site;

- The requirements contained in 10 CFR 30.9, *Completeness and Accuracy of Information*; 10 CFR 30.10, *Deliberate Misconduct*; and 10 CFR 30.7, *Employee Protection*; and
- A discussion of past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.

3. Recordkeeping Requirements Texas Gamma Ray, LLC, will maintain training records, including attendees and test results for 5 years. The records will be made available to the NRC, if requested.

B. Within 120 days of the date of the Confirmatory Order, TGR will develop and submit for NRC review and approval the following procedures:

1. A procedure that provides details on how TGR management and the corporate radiation safety officer (RSO) will provide oversight of assistant and site RSOs.
2. A procedure for conducting field audits of security-related requirements at TGR field offices and as being implemented by radiography crews.
 - The audits must be unannounced to the field offices and radiography crews.
 - The audits must include a review to establish that radioactive sources and devices are properly stored and secured at authorized locations and at temporary job sites.

- A security-related provision that is described in the Appendix to this Order.
- The procedure must contain the elements reviewed during the audit.
- Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested. Audit records will contain the following information:
 - Date of audit;
 - Names of people who conducted the audit;
 - Names of people contacted by the auditor;
 - Audit findings and corrective actions; and
 - Follow-up, if any.

C. Texas Gamma Ray, LLC, shall pay a civil penalty in the amount of \$7,000. This civil penalty shall be made in equal quarterly payments of \$1,750 each. The first payment shall be made within 30 days of the date of the Confirmatory Order. The remaining three payments shall be made in equal payments each quarter, thereafter.

On May 14, 2012, TGR consented to issuing this Order with the commitments, as described in Section V below. TGR further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Texas Gamma Ray, LLC (TGR), has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that TGR's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and TGR's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30, 34, and 150 IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Texas Gamma Ray, LLC, will establish, implement, and maintain a comprehensive training program for employees conducting licensed activities (radiographic operations or radiography). The goal of this program is to conduct licensed operations safely and deter future willful violations by ensuring that its employees understand the importance that the NRC places on violations associated with deliberate misconduct as well as violations caused by careless disregard. The training program will consist of training for

all current and newly hired employees performing licensed activities and will provide for annual refresher training. Texas Gamma Ray, LLC, will complete the following activities in support of the training program:

1. Training Requirements for Current Employees:

- a. Within 90 days of the date of the Confirmatory Order, TGR will conduct a safety stand-down (short-term training) to discuss the importance of safely conducting licensed activities including the concept of a healthy safety culture, willfulness, security of licensed material, and ethics.
- b. Within 60 days of the date of the Confirmatory Order, TGR will contract with an external contractor to provide comprehensive training to all of its current employees who are engaged in licensed activities (up to and including the company president) on what is meant by willfulness (careless disregard and deliberate misconduct), the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct, and the NRC's policy statement on safety culture.
- c. Texas Gamma Ray, LLC, will submit for NRC review and approval, the resume of the contractor recommended to perform the training, at least 15 days prior to the time that TGR intends to execute a contract with the external training contractor.

- d. At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, TGR will submit for NRC review and approval an outline of the topics to be covered during this training session and a copy of a typical examination and the correct answers. The topics in section A.2 of this order will be included in this training.
- e. Texas Gamma Ray, LLC, must complete the comprehensive training of TGR management within 150 days of the NRC's approval of the outline of course topics.
- f. Texas Gamma Ray, LLC, must complete the comprehensive training of employees within 360 days of the NRC's approval of the outline of course topics.
- g. Texas Gamma Ray, LLC, will assess the effectiveness of the training through written testing. Any employee not passing the test will receive remedial training and will be re-tested.
- h. Within 30 days of the completion of the comprehensive training, TGR will provide to the NRC: (1) a letter stating that the training as specified above has been completed and (2) the results of the employee testing process.

- 2. Training Program Requirements Training for current employees, new employees and annual refresher training will include the following elements:

- a. A discussion of the NRC's policy statement on safety culture (79 FR 34773) and TGR management's support of the policy. As part of this training, employees must be provided a copy of NUREG/BR-0500, "Safety Culture Policy Statement." Texas Gamma Ray, LLC, will provide a letter from the company president to each employee regarding company expectations concerning 10 CFR 30.9 and 10 CFR 30.10, and safety and security issues; or issue a company policy statement on these topics;
- b. A security-related topic that is described in the Appendix;
- c. A security-related topic that is described in the Appendix;
- d. A security-related topic that is described in the Appendix;
- e. A discussion on the importance of understanding and following TGR's internal procedures and regulatory requirements applicable to radiographic operations;
- f. A discussion on when to suspend work activities and verify whether specific circumstances allow for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of workers and members of the public;

- g. A discussion of the elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, and examples of enforcement actions that the NRC has taken against individuals. These actions are publicly available on the NRC's Web site;
 - h. The requirements contained in 10 CFR 30.9, *Completeness and Accuracy of Information*; 10 CFR 30.10, *Deliberate Misconduct*; and 10 CFR 30.7, *Employee Protection*; and
 - i. A discussion of past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.
 - 3. Recordkeeping Requirements Texas Gamma Ray, LLC, will maintain training records, including attendees and test results for 5 years. The records will be made available to the NRC, if requested.
- B. Within 120 days of the date of the Confirmatory Order, TGR will develop and submit for NRC review and approval the following procedures:
- 1. A procedure that provides details on how TGR management and the corporate radiation safety officer (RSO) will provide oversight of assistant and site RSOs.
 - 2. A procedure for conducting field audits of security-related requirements at TGR field offices and as being implemented by radiography crews.

- a. The audits must be unannounced to the field offices and radiography crews.
- b. The audits must include a review to establish that radioactive sources and devices are properly stored and secured at authorized locations and at temporary job sites.
- c. A security-related provision that is described in the Appendix to this Order.
- d. The procedure must contain the elements reviewed during the audit.
- e. Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested. Audit records will contain the following information:
 - Date of audit;
 - Name of person(s) who conducted the audit;
 - Names of persons contacted by the auditor(s);
 - Audit findings and corrective actions; and
 - Follow-up, if any.

C. Texas Gamma Ray, LLC, shall pay a civil penalty in the amount of \$7,000. This civil penalty shall be made in equal quarterly payments of \$1,750 each. The first payment shall be made within 30 days of the date of the Confirmatory Order. The remaining three payments shall be made in equal payments each quarter, thereafter.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by TGR of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than TGR, may request a hearing within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign

documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contracting the NRC Meta System Help Desk thorough the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll free call at 1- 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their

initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person (other than TGR) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date this Confirmatory Order is published in the *Federal Register* without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF
THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Elmo E. Collins
Regional Administrator

Dated this 15th day of May 2012

[FR Doc. 2012-12989 Filed 05/25/2012 at 8:45 am; Publication Date: 05/29/2012]